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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CRYSTAL M., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and MICHAEL C., Appellees.	2 CA-JV 2011-0038 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J19416900

Honorable Peter W. Hochuli, Judge Pro Tempore

AFFIRMED

Ronald Zack, PLC
By Ronald Zack
Tucson
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Thomas C. Horne, Arizona Attorney General
By Michelle R. Nimmo
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E C K E R S T R O M, Presiding Judge.

¶1 Appellant Crystal M. challenges the juvenile court's order denying her motion for placement of her child, Michael C., with the child's paternal aunt.[1] Finding no abuse of discretion in the court's denial of the motion and order that the child remain in his foster care placement, we affirm its ruling.

¶2 In March 2010, the Arizona Department of Economic Security (ADES) removed then two-month-old Michael and his two half siblings from Crystal's home. Michael was placed in a foster home. In May 2010 the juvenile court adjudicated Michael and his siblings dependent as to Crystal after she admitted the allegations in an amended dependency petition. In that petition the state alleged that Crystal and Michael's father had "engaged in severe, ongoing domestic violence in the presence of the children," that Michael's father had abused Michael's siblings, and that Michael's father had abused illegal drugs.

¶3 After ADES filed a motion to terminate her parental rights, Crystal filed a motion seeking to place Michael with either his paternal grandmother or a paternal aunt, Melissa C. The case plan for Michael subsequently was changed to severance and adoption, and the juvenile court set a hearing on the placement matter. After a hearing, the court determined neither Michael's grandmother nor Melissa were appropriate placements and ordered that Michael remain in foster care. The court ruled that Melissa's history of domestic violence victimization and failure to protect her own children from that violence precluded her as a placement for Michael. The court noted that, although there had been no incidences of domestic violence since 2005, no evidence had been presented that Melissa had sought treatment for herself or her children. It concluded: "Until such time as the court can feel assured that the Aunt has been involved

[1]The court also denied Crystal's motion to place the child with his paternal grandmother, but Crystal does not challenge that ruling on appeal.

in domestic violence classes, has learned how to protect young children from domestic violence, and is in fact protecting her own children[,] the Court cannot find that it is in the best interest of Michael to place him with [her]."

¶4 The juvenile court did, however, order ADES to contact Melissa to "discuss with her a possible case plan to resolve the Court's concerns about her history of domestic violence victimization and appropriate treatment" and to "complete a records check for domestic violence incidences." It also requested Melissa to provide ADES "with information concerning her current custody arrangement and parenting time with her former husband." Crystal appealed the court's decision. "An order awarding custody of a dependent child as well as a subsequent order ratifying or changing a child's placement is final and appealable." *Antonio P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 402, ¶ 7, 187 P.3d 1115, 1117 (App. 2008).

¶5 On appeal, Crystal argues the juvenile court abused its discretion in denying her motion to place Michael with Melissa because, although Melissa had a history of domestic violence in her home, there was no evidence of any incidents in the six years before the hearing and because the court did not follow "the preferences of our legislature" that children be placed with family members rather than in foster care. We review the court's ruling for an abuse of discretion. *See id.* ¶ 8; *In re Maricopa County Juv. Action No. JD-6236*, 178 Ariz. 449, 451, 874 P.2d 1006, 1008 (App. 1994).

¶6 Crystal suggests that A.R.S. § 8-514(B), which provides that ADES "shall place a child in the least restrictive type of placement available" and lists "kinship care" ahead of foster care in the "order for placement preference," "mandate[s]" placement with a relative. But that statute does not provide a mandate for the juvenile court, nor does it require the court to determine that placement in a higher preference placement

would not be in the child's best interest before ordering a less preferable placement. *See Antonio P.*, 218 Ariz. 402, ¶ 12, 187 P.3d at 1118. Rather, § 8-514(B) "requires only that the court include placement preference in its analysis of what is in the child's best interest." *Antonio P.*, 218 Ariz. 402, ¶ 12, 187 P.3d at 1118.

¶7 Indeed, under A.R.S. § 8-845(A)(2), although a juvenile court may award a dependent child to the custody of a relative "who has a significant relationship with the child," such a placement is not appropriate if "the court has determined that such placement is not in the child's best interests." The court has broad discretion in determining the proper placement of a dependent child, *Antonio P.*, 218 Ariz. 402, ¶ 8, 187 P.3d at 1117, and its primary consideration always must be the child's best interests. *See* § 8-845(B), (C) (in determining placement, court considers "health and safety of the child as a paramount concern"; any permanent plan must be "in the child's best interest"); *Antonio P.*, 218 Ariz. 402, ¶ 8, 187 P.3d at 1117.

¶8 In this case, the juvenile court expressly noted the placement preferences set forth in § 8-514 but stated it could not find placement with Melissa to be in Michael's best interest. There is reasonable evidence in the record to support that finding. *See Antonio M. v. Ariz. Dep't of Econ. Sec.*, 222 Ariz. 369, ¶ 3, 214 P.3d 1010, 1012 (App. 2009) (affirming court's best-interest finding as to placement with grandmother where "reasonable evidence in the record to support" it). Wendy Williamson, Michael's case manager, testified that when she had asked Melissa about "any contact . . . [she] had with law enforcement," Melissa had told her only about one event in May 2005. Melissa did not report any other incidents of domestic violence to Williamson. Williamson's subsequent request for police reports from the Pima County Sheriff's Department, however, revealed five more incidents in which law enforcement had been involved. The

incidents spanned a six-year period and involved Melissa's former husband abusing her in the presence of their children, breaking household objects in anger, and leaving drug paraphernalia in reach of the children. The children also were listed as victims of domestic violence in two of the reports. Melissa declined to pursue prosecution of her former husband on several of these occasions and on one occasion in 2004 became "adversarial towards the police officer" who responded to the home. When she ultimately left her former husband, Melissa left the children behind with their father. When contacted during an investigation of the family by Child Protective Services in 2005, she reported her former husband was "an excellent father."

¶9 As a result of this domestic-violence history, Williamson testified she did not believe Melissa was "able to identify a dangerous person or situation" and she was therefore "fearful for Baby Michael's safety if he were placed in her home." She also opined that Melissa had been "untruthful with [her]" about her family's domestic-violence history. And Williamson further testified she still was waiting to receive two domestic violence reports from the Tucson Police Department involving Melissa's former husband, one of which related to the incident Melissa had told her about in her initial interview and the other of which related to a 2004 incident Melissa had not acknowledged. Williamson also noted that although Melissa "had gone to counseling" she had not completed it.

¶10 Crystal argues, however, that Melissa testified that she had been truthful with Williamson about her domestic-violence history, that there was no evidence of any domestic violence in Melissa's home in the years from 2005 until the hearing in 2011, and that Williamson's testimony about Melissa's ability to protect Michael simply was based on a "hunch" that Melissa's own children had been damaged by domestic violence.

These arguments essentially invite us to reweigh the testimony presented to the juvenile court, and this we will not do. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002).

¶11 Crystal further asserts the juvenile court "abused its discretion in mandating that Melissa engage in [domestic violence treatment] service that there is no evidence to support needing" and in "requiring that, essentially, there be evidence of no domestic violence." She maintains that Melissa's children are doing well, that Melissa has protected herself and her children by remaining free of domestic violence for the past six years, and that Melissa had protected her children by divorcing her husband when she was unable "to mend her marriage."

¶12 In this argument, Crystal again essentially asks that we reweigh the evidence presented as to the harm done to Melissa's children by the domestic violence in her home. *See id.* ("[W]e do not re-weigh the evidence on review."). Although Melissa testified that her children were doing well in school, Williamson, who holds a master's degree in social work, also testified, based not on a "hunch," but on her experience, "training[,] and research," that "children who are traumatized may tend to recreate that trauma" in adulthood and "engage in unhealthy relationships." In view of the evidence presented to the juvenile court, we cannot say it abused its discretion in concluding Melissa had failed to protect her own children when she allowed them to remain in an abusive home for six years before remedying the situation, particularly given that she left the children with their father when she separated from him. In ordering ADES to develop a case plan with Melissa, the court merely provided her with an opportunity to demonstrate she was capable of protecting Michael and thereby to change its finding as to his best interest.

¶13 Ultimately, the juvenile court did not, as Crystal characterizes its ruling, require Melissa to prove there was no domestic violence in her home. Rather, it concluded it was not in Michael's best interest to place him in a home with a caretaker who had shown she was unable to protect her own children for six years from domestic violence and who had not demonstrated she had taken any action since that time to learn to protect a child better in that context. Thus, we cannot say the court lacked reasonable evidence to support its best-interest conclusion or that it abused its discretion in ordering Michael to remain in his foster care placement. The judgment of the juvenile court is affirmed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge